

Claimant injured his low back while working for the respondent on June 4, 1991. Respondent does not dispute the compensability of this injury and voluntarily provided medical treatment and paid temporary total disability benefits. However, respondent terminated claimant for sleeping on the job on August 18, 1993. Claimant contends,

because he is no longer earning a comparable wage, he is now entitled to permanent partial disability benefits based on a work disability.

The respondent, however, contends claimant was terminated for cause not associated with his work-related injury. Therefore, respondent argues claimant is not entitled to a work disability. Respondent argues claimant retains the ability to earn a comparable wage and only lost the accommodated job because of his misconduct.

Nature and extent of claimant's disability is the only issue for Appeals Board review in Docket No. 160,885.

Docket No. 170,475

After claimant injured his low back, claimant alleges he suffered work-related bilateral upper extremity injuries on October 20, 1992. Claimant appeals from the Assistant Director's finding that claimant's workers compensation benefits are limited to medical treatment pursuant to K.S.A. 1992 Supp. 44-501(c) because claimant was not disabled from work from earning full wages for at least one week.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board finds the Award entered by the Assistant Director in Docket No. 160,885 should be affirmed.

The findings of fact and conclusions of law set forth in the Assistant Director's Award are found to be accurate and are adopted by the Appeals Board. The Appeals Board agrees the record supports the Assistant Director's finding that respondent terminated claimant for poor performance unrelated to his work-related low back injury. Therefore, the policy and considerations as announced in Foulk v. Colonial Terrace, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), *rev. denied* 257 Kan. 1091 (1995) should be invoked and the comparable wage claimant was earning at the time of his termination should be imputed to the claimant. Accordingly, the Appeals Board agrees that claimant is not entitled to an award based on work disability but is limited to one based on functional impairment. See Acklin v. Woodson County, Docket No. 147,322 (May 1995).

None of the physicians, that examined claimant and provided impairment ratings for claimant's low-back injury, testified in this case. The Appeals Board also agrees with the Assistant Director's finding that 11.5 percent is the appropriate functional impairment rating for claimant's low-back injury. The functional impairment rating of 11.5 percent was determined by the Assistant Director by averaging the four physicians who provided functional impairment ratings in the medical records stipulated into evidence by the parties.

Docket No. 170,475

After reviewing the record, considering the briefs, and hearing oral arguments of the parties, the Appeals Board finds the Award entered by the Assistant Director in Docket No. 170,475 should be affirmed.

The findings of fact and conclusions of law set forth in the Assistant Director's Award are found to be accurate and are adopted by the Appeals Board. In particular, the Appeals Board agrees the record established that claimant was not disabled from work because of his bilateral upper extremity injuries for at least one week from earning full wages. Therefore, claimant's compensation benefits are limited to medical compensation as required by K.S.A.1992 Supp. 44-501(c). See Boucher v. Peerless Products, Inc., 21 Kan. App.2d 977, 911 P.2d 198 *rev. denied* 260 Kan. 991 (1996) and Osborn v. Electric Corp. of Kansas City, 23 Kan. App. 2d 868, 936 P.2d 297, *rev. denied* 262 Kan. \_\_\_\_ (1997).

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Assistant Director's July 9, 1997, Award and his July 10, 1997, Award Nunc Pro Tunc, should be, and are hereby, affirmed in all respects.

### **IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1998.

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BOARD MEMBER PRO TEM

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BOARD MEMBER

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BOARD MEMBER

c: Stanley R. Ausemus, Emporia, KS  
Craig A. Posson, Dakota City, NE  
Brad E. Avery, Assistant Director  
Philip S. Harness, Director